

**IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE NORTHERN DISTRICT OF MISSISSIPPI**

**IN THE MATTER OF:**

**CHAPTER 13 CASE NO.:**

**CECIL RAY CREEKMORE**

**19-10564-JDW**

**OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE**

COMES NOW Locke D. Barkley, Chapter 13 Trustee, by and through counsel, and files this Objection to Notice of Mortgage Payment Change (the "Objection") and in support states as follows:

1. The Debtor<sup>1</sup> initiated this proceeding with the filing of a voluntary petition for relief on February 8, 2019. The Debtor's Chapter 13 plan (the "Plan") has yet to be confirmed.
2. On April 15, 2019, Ditech Financial LLC as servicer for U.S. Bank, N.A., as Trustee, successor in interest to Wachovia Bank, National Association, as Trustee, for Mid-State Capital Corporation 2005-1 Trust ("Ditech") filed its Proof of Claim (Clm. #6-1) (the "Claim") in the amount of \$105,581.40 which is secured by the principal residence of the Debtor. The Claim consists of prepetition arrearage in the amount of \$23,628.57.
3. The Plan provides for the treatment of the Claim of Ditech pursuant to §1322(b)(5) by curing the prepetition arrearage and maintaining the continuing monthly mortgage payment.
4. According to the Claim, the prepetition arrearage in the amount of \$23,628.57 consists of the following amounts:

Principal and interest due:	\$9,876.23
Prepetition fees due:	\$12,198.52
Escrow deficiency for funds advanced:	\$1,136.26

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<sup>1</sup> The above-referenced Debtor or Debtors shall be referred to herein in the singular as Debtor unless specified otherwise (e.g. Debtor1 or Debtor2).

Post-Petition Payments Per Plan:	\$839.87
Projected escrow shortage:	\$320.62
Less funds on hand:	<u>(\$742.93)</u>
Total prepetition arrearage	\$23,628.57

5. The purpose of including the escrow deficiency and projected escrow shortage in the prepetition arrearage is to bring the balance of the escrow account to a sufficient starting point so that the account balance during the upcoming twelve (12) month period, after payments into and disbursements from, will not fall below the required cushion, which is equal to two times the required monthly escrow payment.

6. On July 11, 2019, Ditech filed its Notice of Mortgage Payment Change (“NMPC”) (Dkt. #24) with a new total payment of \$1,260.10 effective as of August 5, 2019 (the “New Payment”). The basis for the change is stated to be due to a change in the required escrow account payment. As part of the change was the addition of property insurance.

7. According to the NMPC, the escrow payment will increase from \$114.73 to \$500.39. (The Annual Escrow Account Disclosure Statement states that the current escrow payment is \$0.00, instead of \$114.73 as stated in the NMPC; however, for the purposes of this Objection that difference is immaterial.) The new escrow payment is comprised of the required monthly escrow of \$262.91<sup>2</sup> and an escrow shortage of \$237.48. The amount for principal and interest is unchanged. It is the escrow shortage which is the basis of this Objection.

8. Attached to the NMPC is the Annual Escrow Account Disclosure Statement which reflects prior activity in the escrow account and a projection of activity in the account for the upcoming twelve (12) months. That information is then used to

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<sup>2</sup> The required escrow is comprised of property insurance (\$2,193.00) and real property taxes (\$961.90) which, when spread over a 12-month period results in an escrow payment of \$262.91. ( $\$2,193.00 + \$961.90 = \$3,154.90 \div 12 = \$262.91$ ). It is unknown to the Trustee whether these amounts are correct; however, the Trustee takes them as being correct.

calculate the required escrow payment for the upcoming twelve (12) months, any shortage that may exist in the account, and the new monthly mortgage payment.

9. For the projection of activity contained in the NMPC, the beginning balance as of August 2019 (i.e. the ending balance as of July 31, 2019) is negative \$1,762.82, and the shortage amount is calculated to be negative \$2,849.74. When the shortage amount is divided by twelve (12) the result is a monthly escrow shortage payment of \$237.48, which is the amount being collected in the New Payment.

10. As noted in ¶¶ 4 and 5 above, the escrow deficiency and shortage which existed as of the petition date were included in and will be collected through payment of the prepetition arrearage. The negative beginning balance should no longer exist. The account should have been adjusted so that the escrow account was adequately funded as of the petition date.

11. The collection of the shortage in the New Payment will result in the shortage amount being collected twice. Once as part of the prepetition arrearage and again as the escrow shortage component which is part of the New Payment.

12. The Trustee alleges that, effective August 5, 2019, the mortgage payment should be set at \$1,022.62, which consists of principal and interest and required escrow for both property insurance and taxes ( $\$759.71 + \$262.91 = \$1,022.62$ ).

13. The Trustee requests that the NMPC be disallowed, the mortgage payment effective August 5, 2019, be set at \$1,022.62, and that Ditech be ordered to correct the escrow account as necessary to be consistent with the Claim.

WHEREFORE, PREMISES CONSIDERED, Locke D. Barkley, Chapter 13 Trustee, prays that upon notice and hearing that this Court enter its order sustaining the Trustee's Objection and for such other relief to which the Trustee and this bankruptcy estate may be entitled.

Dated: August 26, 2019

Respectfully submitted,  
LOCKE D. BARKLEY, TRUSTEE

BY: /s/ W. Jeffrey Collier  
W. JEFFREY COLLIER, ESQ.  
Attorney for Trustee  
6360 I-55 North, Suite 140  
Jackson, Mississippi 39211  
(601) 355-6661  
ssmith@barkley13.com  
MSB No. 10645

**CERTIFICATE OF SERVICE**

I, the undersigned attorney for the Trustee, do hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and I hereby certify that I either mailed by United States Postal Service, first class, postage prepaid, or electronically notified through the CM/ECF system, a copy of the above and foregoing to the Debtor, attorney for the Debtor, the United States Trustee, and other parties in interest, if any, as identified below.

Ditech Financial, LLC  
Post Office Box 6154  
Rapid City, SD 57709-9858

Karen A. Maxcy, Esq.  
McCalla Raymer Leibert Pierce, LLC  
1544 Old Alabama Rd.  
Roswell, GA 30076

Dated: August 26, 2019

/s/ W. Jeffrey Collier  
W. JEFFREY COLLIER